## SUBJECT INDEX


| | PAGE |
|---|---|
| (a) Statement concerning opinions below | 1 |
| (b) Statement of grounds of jurisdiction | 1 |
| (i) Nature of action | 1 |
| (ii) Dates of judgment and order appealed from, filing of Notice of Appeal, and Order enlarging time to docket record | 2 |
| (iii) Statutory jurisdiction of this Court | 2 |
| (iv) Cases to support the jurisdiction of this Court | 2 |
| (v) California statutes involved; citations only, see appendix for text | 3 |
| (c) Question presented by appeal | 3 |
| (d) Statement of the case | 3 |
| (e) Substantiality of Federal question | 6 |
| (f) Judgment and Order appealed from | 16 |

## TABLE OF AUTHORITIES CITED


| CASES | PAGE |
|---|---|
| Alberts v. State of California, 354 U. S. 476, 77 S. Ct. 1304, 1 L. Ed. 2d 1498 | 2 |
| Griffin v. Illinois, 351 U. S. 12, 76 S. Ct. 585, 100 L. Ed. 891 | 10 |
| Hartford Steam Boiler, etc. v. Harrison, 301 U. S. 459, 57 S. Ct. 838, 81 L. Ed. 1223 | 10 |
| Ho Ah Kow v. Nunan, Fed. Cas. No. 6546 | 10 |
| Marley, Ex parte, 29 Cal. 2d 525, 175 P. 2d 832 | 6 |
| Mayflower Farms v. Ten Eyck, 297 U. S. 266, 56 S. Ct. 457, 80 L. Ed. 675 | 11 |
| Morey v. Doud, 354 U. S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485 | 10 |
| People v. West, Cr. A. 2800, Appellate Dept., Super. Ct., L. A. County, Cal. | 4, 6 |
| Smith v. Cahoon, 283 U. S. 553, 57 S. Ct. 582, 75 L. Ed. 1264 | 10, 11 |
| Tigner v. Texas, 310 U. S. 141, 60 S. Ct. 879, 84 L. Ed. 1124 | 12 |


### TEXTBOOKS


State of California, Assembly Interim Committee Reports, Vol. 13, No. 3, Report prepared for Joint Subcommittee on Air Pollution of Assembly Interim Committees on Conservation, Planning, and Public Works, transmitted to Assembly under date of January 3, 1955:

Page 22 ..... 9

State of California, Assembly Interim Committee Report, Vol. XIII, No. 4, Report of Joint Subcommittee on Air Pollution of Assembly Interim Committees on Conservation, Planning and Public Works, transmitted to the Assembly under date of March 4, 1955:

Page 35 ..... 13

Pages 37, 38, 39 ..... 15

Pages 40, 41 ..... 15

Page 48 ..... 7

| | Pages Jurisdictional Statement | Appendix |
|---|---|---|
| U. S. Constitution, Amendment XIV | 3, 5, 6, 10, 16 | |
| California Constitution: | | |
| Article I, Sec. 13 | 5 | |
| Article IV, Sec. 1 | 5 | |
| 28 U. S. Code, Sec. 1257(2) | 2 | |
| Statutes and Amendments to the Codes California | | |
| Stats. 1933, c. 848, p. 2216 (Penal Code Sec. 19) | 1, 4, 6 | 1 |
| Stats. 1947, c. 632, pp. 1640 et seq. (Health and Safety Code, Secs. 24198-24322, incl.) | 3, 6 | 1-22 incl |
| Sec. 24208 | 6, 8 | 3 |
| Sec. 24242 | 1, 4, 6, 8 | 8 |
| Sec. 24243 | 6, 8 | 8 |
| Sec. 24252 | 6 | 10 |
| Sec. 24253 | 1, 4, 6 | 10 |
| Stats. 1949, c. 1185, p. 2105 et seq. (Health and Safety Code, Secs. 24330-24341, incl.) | 3 | 22-23 |
| Stats. 1955, c. 1300, p. 2370 (Health and Safety Code, Sec. 24254) | 3 | 24 |
| Stats. 1955, c. 1797, pp. 3317 et seq. (Health and Safety Code, Secs. 24345-24372, incl., and 24213 and 24214) | 3, 7, 12 | 25-49 incl |
| Sec. 24346.2 | 12 | 26 |
| Sec. 24350 | 7 | 27 |
| Sec. 24350.2 | 7 | 27 |
| Sec. 24350.3 | 7 | 27 |
| Sec. 24360 | 8, 9 | 35 |
| Sec. 24213 | | 48 |
| Sec. 24214 | | 49 |

# IN THE
# Supreme Court of the United States

October Term, 1957.
No. .....

FRANK W. BABCOCK,
*Appellant,*

*vs.*

THE PEOPLE OF THE STATE OF CALIFORNIA,
*Respondent.*

## JURISDICTIONAL STATEMENT OF APPELLANT.

(a) There has been no opinion written, official or unofficial, in any of the courts below.

(b) Jurisdiction of this Court is invoked on the following grounds:

(i) This is a criminal action by the People of the State of California against Frank W. Babcock brought in the Municipal Court, Los Angeles Judicial District, County of Los Angeles, State of California for discharging air contaminants within the Los Angeles County, California, Air Pollution Control District in violation of Section 24242 of the Health and Safety Code of the State (Appx. p. 8). By Section 24253 of the same code such a violation is made a misdemeanor (Appx. p. 10). By Section 19 of the Penal Code of the state, misdemeanors are punishable by fine or imprisonment or by both such fine and imprisonment (Appx. p. 1).

(ii) Judgment of the Appellate Department of the Superior Court of the State of California; in and for the County of Los Angeles, to which court an appeal from an order of the Municipal Court adverse to appellant was taken, affirming the order of the Municipal Court granting defendant probation on certain conditions, was rendered and entered on November 12, 1957 [R. 13]. Petition for rehearing was filed [R. 14] and denied [R. 16] on November 19, 1957. Notice of Appeal to this Court was filed in the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles on December 16, 1957 [R. 17] and on February 4, 1958, the Honorable Edward T. Bishop, Judge of said Court, enlarged the time within which to docket and file the record in this Court to and including March 15, 1958 [R. 22].

(iii) Jurisdiction of this appeal is conferred upon this Court by Title 28, United States Code, Section 1257(2), providing in pertinent part that:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * * *
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

(iv) Jurisdiction of appeals from the Superior Court of the State of California, in and for the County of Los Angeles, Appellate Department, has been held to exist:

> *Alberts v. State of California,* 354 U. S. 476, 77 S. Ct. 1304, 1 L. Ed. 2d 1498, 1505.

(v) The California statutes, validity of which is involved in this appeal are:

"*Statutes and Amendments to the Codes*—California Statutes of 1947, Chapter 632, pages 1640 *et seq.* (Appx. pp. 1-22 incl.), as amended by Statutes of 1949, Chapter 1185, pages 2105 *et seq.* (Appx. p. 22), and by Statutes of 1955, Chapter 1300, page 2370 (Appx. p. 24), and as affected by Statutes of 1955, Chapter 1797, pages 3317 *et seq.* (Appx. pp. 25-49, incl.).

These statutes, as they existed on July 9, 1956, the date of the alleged violation in this case, are set forth in full in the Appendix. These statutes all added or amended sections of the Health and Safety Code of the State of California and all section numbers referred to herein are section numbers of such code except as specifically otherwise noted.

(c) The following question is presented by this appeal:

Whether a state of the United States may, consistent with the Fourteenth Amendment to the Constitution of the United States, prohibit the commission of a certain act within two designated areas within the state, but provide that only persons committing the act within one of such areas shall be subject to fine or imprisonment, or, does such action by the state deny to those persons so subject to fine and imprisonment the equal protection of the laws?

(d) On July 9, 1956, appellant was the owner of the Baltimore Hotel in the City and County of Los Angeles, State of California, and within the Los Angeles County Air Pollution Control District, a state agency coterminous with said county.

On that day black smoke from an oil fired boiler on the premises, of a shade as dark or darker as that designated

No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, was emitted from a stack connected to the boiler for a period of eleven consecutive minutes [R. 10].

Emission of such an air contaminant for a period or periods aggregating more than three minutes in any one hour was prohibited by Section 24242 of the Health and Safety Code of the State of California (Appx. p. 8), was made a misdemeanor by Section 24253 of said code (Appx. p. 10), and was made punishable by fine or imprisonment or by both by Section 19 of the Penal Code of the State of California (Stats. 1933, Ch. 848, p. 2216; Appx. p. 1).

Complaint of violation of the statute was filed against appellant in the Municipal Court, Los Angeles Judicial District, County of Los Angeles, State of California on August 15, 1956 [R. 3]; on June 26, 1957, appellant stipulated that the complaint was before the Court, that he was ready for trial and that the cause might be submitted on the officer's report together with the Ringelmann Chart [R. 3].

There was no evidence that the offense had been committed by appellant personally, or with his knowledge, or by his direction, but the statute had previously been construed as

> ". . . one of those penal provisions which places criminal responsibility upon an employer for violations committed by an employee in the course of his employment, even though the act is done in violation of the employer's instructions."
>
> *People v. West* (Cr. A 2800, App. Dept., S. Ct., L. A. County, Cal.).

Appellant was found guilty by the Municipal Court, and on July 16, 1957, the Court made and entered an Order

Granting Probation, as follows: Proceedings were suspended without imposition of sentence, and probation was granted, the order placing defendant in the custody of the Probation Officer for a period of one year subject to the following terms of probation: That he serve the first 10 days of the probationary term in the City Jail; that he pay a fine of $200.00 through the Probation Officer in the manner directed by the Probation Officer; and that he obey all laws and regulations of duly instituted legal authority covering Air Pollution matters; that he obey all laws, orders, rules and regulations of the Probation Department and of the Court [R. 3 and 9].

On July 16, 1957, appellant filed a written notice of appeal to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles from the Order Granting Probation [R. 1] and subsequently filed a Statement on Appeal in which, as grounds of appeal, appellant asserted (A) that Section 24242 of the Health and Safety Code of the State of California as construed and applied in the case at bar was unconstitutional in that it violates the prohibition of the Fourteenth Amendment of the Constitution of the United States and Article I, Section 13, and Article IV, Section 1, of the California Constitution; and (B) that the evidence to support the verdict and finding of guilt and the judgment or order granting probation was insufficient [R. 4].

Appellant's briefs on appeal raised three questions: (1) that the statute should be so construed as to require proof that appellant himself intended to commit the act charged, in which case the evidence was insufficient; (2) that if the statute were not so construed it was unconstitutional as depriving appellant of his liberty without due

process of law; and (3) that the statute was unconstitutional as denying to appellant the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States.

So far as the California courts were concerned the first ground was foreclosed to appellant by *People v. West, supra,* p. 4. The second ground was foreclosed to appellant by *Ex parte Marley,* 29 Cal. 2d 525, 175 P. 2d 832; and the appeal was argued and submitted on the third ground, was decided adversely to appellant, and petition for rehearing was submitted on the third ground and was denied [R. 14 and 16]. This appeal followed.

(e) State control of air pollution in California was first made possible in 1947 by the enactment of Division 20, Chapter 2, of its Health and Safety Code. (Stats. 1947, c. 632, pp. 1640 *et seq.;* Appx. pp. 1-22, incl.)

The act was general, and enabling, containing authority for any county to establish an Air Pollution Control District co-extensive with its existing territory, after notice and hearing and a finding of the necessity for such a district to function. Upon the establishment of any district the members of the county's existing governing body, the Board of Supervisors became, *ex officio,* members of the Air Pollution Control Board of the district provided for by the act, with extensive regulatory powers. The act defined air contaminants (Stats. 1947, ch. 632, Sec. 24208, Appx. p. 3), prohibited their release into the atmosphere (Stats. 1947, ch. 632, Secs. 24242 and 24243, Appx. p. 8), made violations enjoinable (Stats. 1947, ch. 632, Sec. 24252, Appx. p. 10), and punishable as misdemeanors (Stats. 1947, ch. 632, Sec. 24253, Appx. p. 10) by fine or imprisonment, or both (Penal Code, Sec. 19; Stats. 1933, ch. 848, p. 2216; Appx. p. 1).

Pursuant to the statute the Los Angeles County Air Pollution Control District was formed and commenced to function in 1947.[1]

In 1955 there was enacted Division 20, Chapter 2.5 of the California Health and Safety Code (Stats. 1955, ch. 1797, pp. 3317 *et seq.;* Appx. pp. 25-49, incl.).

This was an act forming an Air Pollution Control District consisting of the Counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara, to be known as the Bay Area Air Pollution Control District to which, after notice and hearing and a finding of necessity, might be added the adjoining Counties of Napa, Solano and Sonoma (Stats. 1955, ch. 1797, Secs. 24350, 24350.2, 24350.3; Appx. p. 27).

So far as control of the substantive mischief was concerned the two statutes were substantially identical, a fact which was fully recognized when the Bay Area Legislation was proposed.[2]

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[1]Other districts formed under this statute and the date formed are: Orange County—1950; San Diego County—1955; Riverside County—1955; and San Bernardino County—1956.

[2]"The enabling statute permitting unified districts was developed to meet the needs of a three-county area at most. Although the statute contains provisions permitting unified districts, such a consolidation, comprised of the nine Bay Area counties, would under that statute be cumbersome and probably unworkable. Almost insolvable problems in jurisdiction, administration, and apportionment of costs would result. The legislation submitted with this report retains the best of the present statute and so amends that statute as to make it workable for the metropolitan Bay Area. While it differs fundamentally from the original in regard to the composition of the governing board, the legislative creation of a district, the mandatory creation of a representative advisory board, and the method of sharing costs of the district, *other variations are not substantial.*" (Italics supplied.)

*State of California, Assembly Interim Committee Reports, Vol. XIIII, No. 4,* Report of the Joint Subcommittee on Air Pollution of Assembly Interim Committees on Conservation, Planning, and Public Works, transmitted to the Assembly under date of March 4, 1955, page 48.

Air contaminants were identically defined in each statute (Stats. 1947, ch. 632, Sec. 24208, Appx. p. 3; Stats. 1955, ch. 1797, Sec. 24360, Appx. p. 35), except that "mist" was added to the list of contaminants in the later section.

The basic prohibition in each of the statutes was identical (Stats. 1947, ch. 632, Sec. 24243, Appx. p. 8; Stats. 1955, ch. 1797, Sec. 24360, Appx. p. 35).

The subsidiary prohibition contained in Stats. 1947, ch. 632, Sec. 24242, Appendix p. 8, which is directly involved in the case at bar is only a special case, necessarily included in the general prohibition, since it is obvious that the emission of black smoke from an oil fired boiler, containing particles of unconsumed fuel oil must necessarily ". . . have a natural tendency to cause injury or damage to business or property" within Sections 24243 and 24360. These sections are set forth in the margin, together with Section 24242.[3] The results of burning hydrocarbon fuel has been summarized as follows:

> "When any hydrocarbon fuel is burned, certain gases and vapors are given off. The combustion of coal, fuel oil, or gas produces unburned hydrocarbons, aldehydes, nitrogen dioxide, sulfur dioxide, carbon

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[3]Sec. 24242. A person shall not discharge into the atmosphere from any single source of emission whatsoever any air contaminant for a period or periods aggregating more than three minutes in any one hour which is: (a) As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, or (b) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subsection (a) of this section.

Sec. 24243. A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which

monoxide, and water vapor, in addition to other noxious gases and vapors."[4]

There were two major differences between the two acts: (1) The provisions for administration of and the financial support of the districts formed under the respective acts were unlike, and (2) as finally enacted, violations of the later act were enjoinable only without provision for fine or imprisonment.

Thus, a burden was placed by the State of California on persons within the Los Angeles Air Pollution Control District[5] to which persons within the Bay Area Air Pollution Control District were not subject, in that persons releasing air contaminants of identical quantity and quality under identical circumstances, one within the Bay Area District and the other within the Los Angeles District were subject to different and unequal punishment for identical violations.

Such action by California was a denial by it to persons within the Los Angeles District, including appellant, of the equal protection of the laws guaranteed by the Four-

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cause or have a natural tendency to cause injury or damage to business or property.

Sec. 24360. A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.

[4]*State of California, Assembly Interim Committee Reports, Vol. 13, No. 3,* p. 22, Report prepared for Joint Subcommittee on Air Pollution of Assembly Interim Committees on Conservation, Planning, and Public Works, transmitted to Assembly under date of January 3, 1955.

[5]And on persons within the other districts formed under the 1947 Act. See Note 1, *supra.*

teenth Amendment to the Constitution of the United States.[6]

*Ho Ah Kow v. Nunan,* Fed. Cas. No. 6546;

*Smith v. Cahoon,* 283 U. S. 553, 57 S. Ct. 582, 75 L. Ed. 1264;

*Mayflower Farms v. Ten Eyck,* 297 U. S. 266, 56 S. Ct. 457, 80 L. Ed. 675;

*Hartford Steam Boiler, etc. v. Harrison,* 301 U. S. 459, 57 S. Ct. 838, 81 L. Ed. 1223;

*Griffin v. Illinois,* 351 U. S. 12, 76 S. Ct. 585, 100 L. Ed. 891;

*Morey v. Doud,* 354 U. S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485.

Each of the acts has an identical purpose, the reduction of the quantity of air contaminants and the prohibition of their release into the atmosphere.

Has the division of violators into two classes based upon their geographical location at the time of violation any just and reasonable relation to the object of the legislation?

Under the two acts it is only the geographical location of the violator at the time of violation which determines whether or not he is subject to fine or imprisonment.

There is nothing in reason or experience to justify a conclusion that the geographical location of a household or apartment house incinerator, of a commercial or industrial boiler or manufacturing or processing plant, of a gasoline storage tank or refinery, of building operations, or of an automobile or truck can have the slightest bearing upon the likelihood of a prohibited discharge of air contami-

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[6]". . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

nants produced by the use of such equipment or the conduct of any such operations. Nor did the Legislature make any finding that geographical location of persons, processes or equipment tended in any way to increase or decrease the likelihood of the prohibited discharges.[7]

In the absence of any such finding the Court has ". . . no right to conjure up possible situations which might justify the discrimination. . . ."

*Mayflower Farms v. Ten Eyck,* 297 U. S. 266, 274, 56 S. Ct. 457, 80 L. Ed. 675.

The case at bar seems substantially identical to *Smith v. Cahoon,* 283 U. S. 553, 51 S. Ct. 582, 75 L. Ed. 1264. There Florida imposed upon some private carriers the burden of supplying a bond for the protection of freight carried and of the public receiving personal injuries by any act of negligence and for damage to the property of any person other than the assured. No such burden was imposed upon private carriers transporting agricultural, horticultural, dairy or other farm products, fresh and salt fish, oysters and shrimp from the point of production to the assembly or shipping point for the primary market.

Conceding the broad power of the state ". . . to insist upon suitable protection for the public against injuries through the operation on its highways of carriers for hire . . ." (283 U. S. 553, 567) the Court held that a classification abused merely on the nature of the product transported bore no relation to the statutory purpose and that

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[7]If the geographical location of a violation alone is to be held to be a sufficient basis for imposing upon a defendant burdens not imposed upon others committing the same act elsewhere, we can foresee some interesting legislation affecting persons whose principal activities take place within areas to which they have been relegated by policies of segregation.

Florida was constitutionally prohibited from making such a discrimination.

The case at bar is unlike *Tigner v. Texas*, 310 U. S. 141, 60 S. Ct. 879, 84 L. Ed. 1124. There, by separate statutes commercial combinations in restraint of trade were prohibited, and violations of the statute were punishable criminally, while agricultural combinations were prohibited but no sanction other than injunctive relief was provided for. There, the same rational basis for classification between commercial and agricultural combinations supported both the substantive and the remedial differences.

The only reason for the separate California acts and the only legislative finding supporting the separateness lies not in any difference in the mischief to be dealt with but in the differences between the two acts with respect to administration and financing.

Section 24346.2 (Stats. 1955, ch. 1797, Appx. p. 26) contains the only applicable finding, and is as follows:

> "The problems of air pollution are primarily regional and dependent upon factors of weather, topography, population, transportation, methods of waste disposal, and agricultural and industrial development. The San Francisco Bay area, with its permanent temperature inversion layer, presents a special problem, distinct from that found in the remainder of the State. This chapter is enacted to provide a special district to control and suppress air pollution in that area.
>
> "Since the problem requiring this legislation is local and special due to atmospheric and geographic conditions, a general law cannot be made applicable so as to insure its effective alleviation. It is necessary, therefore, to create, by special law, an air pollution control district which includes only that area within the boundaries of the Counties of Alameda,

Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma."

The *California Assembly Interim Committee Report,* Volume XIII, No. 4, submitted to the Assembly under date of March 4, 1955, in connection with the proposed legislation which, as amended, was subsequently enacted as Statutes of 1955, chapter 1797, clearly shows that the finding related only to the necessity of providing an administrative unit different from that permitted by the 1947 act for the San Francisco Bay Area Counties.

"An examination of a topographical map at 500-foot contour will show that the Bay Area constitutes a well defined basin including portions of all the nine Bay Area counties of Marin, Sonoma, Solano, Contra Costa, Napa, Alameda, Santa Clara, San Mateo, and San Francisco, the basin has only three major outlets: The Golden Gate, Carquinez Straits, and the mouth of the Russian River. Most of the Bay Area's population and industry are located within this basin (Report cited, p. 35).

* * * * * * * *

"The existing air pollution control act was designed for the Los Angeles area. Such an act was needed to meet the problem of cutting through city government jurisdictions, in order to have uniform, county-wide rules covering air pollution and rules having precedence over any conflicting city ordinances calling for less stringent controls. State law must be employed for the same reasons in the Bay Area, but in the case of Los Angeles there was no problem of having to cut across county lines to accomplish uniform rules in several counties with a common air pollution problem; at least that was thought to be the case in 1947 when the present act was passed. The present law permits control in county units only, although it does have provisions whereby existing dis-

tricts can consolidate. There appears to be no reason to expect that the several counties in the Bay area would separately activate air pollution control districts and then consolidate them. Each county can be expected to wait until the others impose controls for to do otherwise is to invite industry to locate in a neighboring county which has no controls.

* * * * * * * *

"It is the conclusion of the subcommittee that the present act does not meet the Bay Area pollution problem for the following reasons:

1. The use of the word contiguous as a condition to the merger of air pollution districts may seriously hamper the formation of an air pollution district in the Bay Area since all Bay Area counties are not contiguous. Even if counties forming a district were contiguous, the withdrawal of a centrally located county would break this factor and might force the dissolution of the district.

2. The requirement that counties have activated districts before merging into a unified district would require two steps to achieve the desired end—first, activation of a county district and, second, agreement to form a unified district.

3. The interrelationship of the powers of the unified district officers with officers in the individual zones is not clear. This is particularly true of the chain of command of the unified district air pollution control officer over local officers.

4. In the event that the nine counties in the Bay Area constituting the area of the pollution problem were to follow the two required steps and create a unified district, the board of control would consist of 51 members. It is evident that such a board would be too cumbersome for effective operation. It is further clear that even though a board of this size were

effective it would be administratively unwise to consume the time of all of the supervisors of the nine counties in the control process.

5. The provision . . . that 'all county officers, their assistants, clerks, and all other county employees of the zones within the district shall be ex officio officers, assistants, deputies, and employees of the district in which they are employed' creates an administrative monstrosity when applied to the nine counties of the Bay Area. The provision that these officials function 'only within the zone in which they are employed' leaves grave doubt as to the powers of the officers of the unified district over their statutory local assistants. Obviously, the unified district should have power to employ people on its immediate staff for the performance of unified district functions in any part of the basin. (Report cited, pp. 37, 38, 39.)

* * * * * * * *

"The statements of representatives from counties seriously considering the activation of air pollution control districts under present legislation at the subcommittee's formal hearing and at the various conferences support the following conclusions:

1. The smog problem is basin-wide and requires a basin-wide organization.

2. Present legislation makes possible the creation of such a district but is impracticable for the nine counties of the Bay Area and its use highly improbable.

3. Counties therefore are delaying activation under the existing legislation, awaiting realistic amendments that would make the act useful to the region." (Report cited, pp. 40, 41.)

It is clear that the problem before the Legislature did not involve enforcement of the statutes and that the finding made should not be held to cover enforcement.

For the foregoing reasons we submit that there was not and could not have been a legislative finding justifying the discrimination created by the interaction of the 1947 and 1955 acts, that appellant, within the Los Angeles District was subjected to a burden not imposed upon others similarly situated in violation of his constitutional rights under the Fourteenth Amendment to the Constitution of the United States, that his conviction, and the order granting him probation cannot stand, that the judgment and order of the Appellate Department of the Superior Court should be reversed with directions to that court to reverse the order of the Municipal Court, Los Angeles Judicial District and remand the cause with directions to dismiss the complaint against appellant in that court.

(f) That the judgment appealed from reads as follows:

"In the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles.

People of the State of California, Plaintiff and Respondent, vs. Frank W. Babcock, Defendant and Appellant. Superior Court No. CR A 3676. Trial Court No. 53892.

ON APPEAL FROM THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA. JOHN F. AISO, JUDGE.

[Endorsed: Filed Nov. 12, 1957. Harold J. Ostly, County Clerk. By J. MacGregor, Deputy.]

This cause having been argued and submitted and fully considered, judgment is ordered as follows:

It is ORDERED and ADJUDGED that the order granting probation made and entered in the Municipal Court of the Los Angeles Judicial District, County of

Los Angeles, State of California, in the above entitled cause be and the same is hereby affirmed. The appeal from non-existent 'judgment' is dismissed.

November 12, 1957

BY THE COURT
BISHOP, *Presiding Judge*
SWAIN, *Judge*
KAUFFMAN, *Judge.*"

[R. 13]

(2) That the order appealed from reads as follows:

"In the Appellate Department of the Superior Court, County of Los Angeles, State of California.

People of the State of California, Plaintiff and Respondent, vs. Frank W. Babcock, Defendant and Appellant. Superior Court No. CR A 3676. Trial Court No. 53892.

ORDER DENYING REHEARING.

The petition of appellant for a rehearing after judgment of this court on appeal in the above-entitled case having been filed and having been duly considered,

Said petition is hereby denied.

Dated November 19, 1957.

BY THE COURT
BISHOP, *Presiding Judge*
KAUFFMAN, *Judge*

[Endorsed: Filed Nov. 19, 1957. Harold J. Ostly, County Clerk. By J. MacGregor, Deputy.]"
[R. 16]

Respectfully submitted,

AUSTIN CLAPP,
*Attorney for Appellant.*

## APPENDIX.

STATS. 1933, c. 848, p. 2216.

(Penal Code, Section 19).

19. Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both.

STATS. 1947, CHAPTER 632, p. 1640 *et seq.*

*An act adding Chapter 2 to Division 20 of the Health and Safety Code, relating to the control and suppression of air pollution.*

[Approved by Governor June 10, 1947. Filed with Secretary of State June 10, 1947.]

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 2 is hereby added to Division 20 of the Health and Safety Code, to read:

CHAPTER 2. AIR POLLUTION CONTROL DISTRICTS.

Article 1. Creation and Functioning of Districts.

24198. The Legislature finds and declares that the people of the State of California have a primary interest in atmospheric purity and freedom of the air from any air contaminants and that there is pollution of the atmosphere in many portions of the State which is detrimental to the public peace, health, safety, and welfare of the people of the State.

24199. The Legislature hereby finds and declares:

(a) That in portions of the State the air is polluted with smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, particulate matter, and other air contaminants.

(b) That it is not practical or feasible to prevent or reduce such air contaminants by local county and city ordinances.

(c) That in other portions of the State the air is not so polluted.

(d) That it is necessary, therefore, to provide for air pollution control districts in those portions of the State where regulations are necessary and feasible to reduce air contaminants in order to safeguard life, health, property and the public welfare and to make possible the comfortable enjoyment of life and property.

24200. In each county there is hereby created an air pollution control district.

24201. The boundaries of every air pollution control district shall be coextensive with the boundaries of the county within which it is situated.

24202. An air pollution control district shall not transact any business or exercise any of its powers under this chapter until or unless the board of supervisors of the county in which it is situated, by proper resolution, declares at any time hereafter that there is need for an air pollution control district to function in such county.

24203. The board of supervisors at any time on its own motion may hold a public hearing to determine whether or not there is need for an air pollution control district to function.

24204. The board of supervisors shall give notice of the time and place of a public hearing to determine whether or not there is need for an air pollution control district to function by publication once in a newspaper of general circulation not less than 15 days before, and not more than 45 days before such hearing.

24205. The board of supervisors may adopt a resolution declaring that there is need for an air pollution control district to function if from the evidence received at such a public hearing it finds:

(a) That the air within such county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with the comfortable enjoyment of life or property.

(b) For any reason it is not practical to rely upon the enactment or enforcement of local county and city ordinances to prevent or control the emission of smoke, fumes, or other substances which cause or contribute to such pollution.

Upon the adoption of this resolution the district shall begin to function.

24206. A resolution declaring that there is need for an air pollution control district to function is sufficient if it finds that there is need for an air pollution control district to function, and finds in substantially the wording of Section 24205 that both of the enumerated conditions exist. No further detail is necessary.

24207. A copy of a resolution declaring that there is need for an air pollution control district, duly certified by the county clerk, is admissible in evidence in any suit, action or proceeding.

24208. As used in this chapter, "air contaminant" includes smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof.

24209. The board of supervisors of a county in which an air pollution control district has been authorized to transact business and exercise its powers, may from time to time appropriate funds to such air pollution control district which funds shall be deposited in the treasury of such air pollution control district.

24210. All such appropriations are legal charges against the county.

24211. Every air pollution control district is a body corporate and politic.

24212. Upon the adoption by the board of supervisors of a resolution declaring that there is need for an air pollution control district to function the air pollution control district in that county shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at its pleasure.

(d) To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.

(e) To lease, sell or dispose of any property or any interest therein whenever in the judgment of the air pollution control board such property, or any interest therein, or part thereof, is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of the same for the purposes of the district, and to pay any compensation received therefor into the general fund of the district.

Article 2. Officers.

24220. The board of supervisors of a county shall be, and they are hereby designated as, and empowered to act as, ex officio the air pollution control board of the air pollution control district in such county.

24221. All county officers, their assistants, clerks, deputies, and employees, and all other county employees, shall be ex officio officers, assistants, deputies, clerks, and employees, respectively, of the air pollution control district in the county by which they are employed. Except as otherwise provided in this article, they shall perform respectively the same various duties for the air pollution control district as for the county without additional compensation, in order to carry out the provisions of this chapter.

24222. The air pollution control board shall appoint an air pollution control officer.

24223. The air pollution control board may provide for assistants, deputies, clerks, attaches, and other persons to be employed by the air pollution control officer, and the times at which they shall be appointed.

24224. The Air Pollution Control Officer shall observe and enforce, within his Air Pollution Control District:

(a) The provisions of this chapter.

(b) All orders, regulations, and rules prescribed by the Air Pollution Control Board of the Air Pollution Control District pursuant to this chapter.

(c) All variances and standards which the hearing board has prescribed pursuant to Article 5 of this chapter.

24225. The air pollution control board shall appoint a hearing board to consist of three members, none of whom

is otherwise employed by the air pollution control district or by the county. Two members shall have been admitted to practice law in this State. One member shall be a chemical or mechanical engineer.

24226. The air pollution control board shall appoint one member of the hearing board for a term of one year, one for a term of two years, and one for a term of three years. Thereafter the terms of members of the hearing board shall be three years.

24227. The air pollution control board shall determine the compensation of, and pay from district funds, the air pollution control officer, all of his assistants, deputies, clerks, attaches, and other employees, and members of the hearing board.

24228. In any county having a system of civil service, the air pollution control board shall appoint the air pollution control officer, and the air pollution control officer shall appoint all of his assistants, deputies, clerks, attaches, and other employees, pursuant to such civil service provisions, except:

(a) If the civil service commission or body performing the functions thereof, finds that any person has been employed by the county or by any city within the air pollution control district for a continuous period of not less than six months prior to the effective date of a resolution adopted by the board of supervisors pursuant to Article 1 of this chapter, in a position the duties of which, and qualifications for which are substantially the same as, or are greater than and include qualifications which are substantially the same as those of any position in the air pollution control district, and such person has attained permanent civil service status in such city or

county position, the civil service commission or such other body shall certify, without examination, such person as eligible to hold such air pollution control district position.

(b) If the civil service commission or body performing the functions thereof finds that any person has been employed by the county or by any city within the air pollution control district in a position the duties of which, and qualifications for which are substantially the same as, or are greater than and include qualifications which are substantially the same as those of any position in the air pollution control district, at the request of the air pollution control officer, the civil service commission or such other body, may certify, without examination, such person as eligible to hold such air pollution control district position.

(c) This section does not apply to the appointment of members to the hearing board.

24229. All officers and employees of an air pollution control district are entitled to the benefits of the County Employees' Retirement Law of 1937, Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, to the same extent as employees of the county. An air pollution control district is a district as defined in Section 31468 of the Government Code.

24230. If any person is employed by an air pollution control district after certification without examination by the civil service commission or similar body because of his employment in a position of similar duties by the county or by a city within the air pollution control district, for the purpose of retirement benefits and salary rates all time employed in such county or city position shall be considered as time employed by the air pollution control district.

24231. In enforcing the provisions of this chapter and such orders, regulations, rules, variances, and standards, the Air Pollution Control Officer of an Air Pollution Control District is a peace officer.

## Article 3. Prohibitions.

24241. The provisions of this article do not apply within any air pollution control district unless and until, pursuant to resolution as provided in Article 1 of this chapter, such air pollution control district may function and exercise its powers.

24242. A person shall not discharge into the atmosphere from any single source of emission whatsoever any air contaminant for a period or periods aggregating more than three minutes in any one hour which is:

(a) As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, or

(b) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subsection (a) of this section.

24243. A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.

24245. (Amended—effective 9-11-57). The provisions of Section 24242 do not apply to smoke from fires:

(a) Set by or permitted by any public officer if such fire is set or permission given in the performance of the

official duty of such officer, and such fire in the opinion of such officer is necessary.

(1) For the purpose of the prevention of a fire hazard which cannot be abated by any other means, or

(2) The instruction of public employees in the methods of fighting fire.

(b) Set pursuant to permit on property used for industrial purposes for the purpose of instruction of employees in methods of fighting fire.

24246. The Air Pollution Control Officer, during reasonable hours, for the purpose of enforcing or administering this chapter, or of any order, regulation or rule prescribed pursuant thereto, may enter every building, premises, or other place, except a building designed for and used exclusively as a private residence and may stop, detain, and inspect any vehicle designed for and used on a public highway but which does not run on rails. Every person is guilty of a misdemeanor who in any way denies, obstructs, or hampers such entrance, or such stopping, detaining, or inspection of such vehicle, or who refuses to stop such a vehicle upon the lawful order of the Air Pollution Control Officer.

24247. The Legislature does not, by the provisions of this chapter, intend to occupy the field.

The provisions of this chapter do not prohibit the enactment or enforcement by any county or city of any local ordinance stricter than the provisions of this article and stricter than the rules and regulations adopted pursuant to Article 4 of this chapter, which local ordinance prohibits, regulates or controls air pollution.

24248. The provisions of this chapter do not supersede any such local county or city ordinance.

24249. If it should be held that the provisions of this chapter supersede the provisions of any local county or city ordinance, such suspension shall not bar the prosecution or punishment of any violation of such ordinance which violation was committed when such ordinance was in full force and effect.

24250. Nothing in this article limits in any way the power of the air pollution control board to make needful orders, rules, and regulations pursuant to Article 4 of this chapter. Nothing in this article permits any action contrary to any such order, rule, or regulation.

24251. The provisions of Section 24242 do not apply to:

(a) Agricultural operations in the growing of crops, or raising of fowls or animals, or,

(b) The use of an orchard or citrus grove heater which does not produce unconsumed solid carbonaceous matter at a rate in excess of one (1) gram per minute, or,

(c) The use of other equipment in agricultural operations in the growing of crops, or raising of fowls or animals.

24252. Any violation of any provision of this article or of any order, rule, or regulation of the air pollution control board may be enjoined in a civil action brought in the name of the people of the State of California.

24253. Every person who violates any provision of this article is guilty of a misdemeanor. Every day during any portion of which such violation occurs constitutes a separate offense.

Article 4. Rules and Regulations.

24260. The air pollution control board of an air pollution control district may make and enforce all needful orders, rules, and regulations necessary or proper to accomplish the purposes of this chapter for the administration of such district, and may perform all other acts necessary or proper to accomplish the purposes of this chapter.

24261. The air pollution control board shall not enact any order, rule or regulation until it first holds a public hearing thereon. It shall give not less than 10 days' notice of the time and place of such public hearing by publication in a newspaper of general circulation published within the district if such a newspaper is published within the district. If no newspaper of general circulation is published within the district it shall give notice of the time and place of public hearing by posting in a public place not less than 10 days before such hearing.

24262. Whenever the air pollution control board finds that the air in the air pollution control district is so polluted as to cause any discomfort or property damage at intervals to a substantial number of inhabitants of the district, the air pollution control board may make and enforce such orders, rules, and regulations as will reduce the amount of air contaminants released within the district.

24263. The Air Pollution Control Board may require by regulation that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance specified by such regulation the use of which may cause the issuance of air contaminants, such person shall obtain a permit to do so from the Air Pollution Control Officer.

Insofar as the regulations do not grant an automatic permit for the operation or use of any article, machine, equipment, or contrivance in existence upon the effective date of such regulations, a permit shall not be required without first affording the owner, operator, or user thereof a reasonable time within which to apply for such permit, and to furnish the Air Pollution Control Officer the information required pursuant to Section 24269.

24264. The air pollution control board may require that before the air pollution control officer issues a permit to build, erect, alter, or replace any equipment, that the plans and specifications show, and that the permit issued by the air pollution control officer require, that such building, erection, alteration, or replacement will be done in such a manner, and that such approved equipment be used as the air pollution control board finds will eliminate or reduce the discharge of any air contaminants.

24265. A permit shall not be required for:

(a) Any mobile equipment.

(b) Any structure designed for and used exclusively as a dwelling for not more than four families.

(c) An incinerator used exclusively in connection with such a structure.

(d) Barbecue equipment used exclusively in connection with such a structure.

(e) Equipment described in Section 24251; except that the Air Pollution Control Board of any county, any part of which lies south of the Sixth Standard Parallel South, Mount Diablo Base and Meridian, may at its discretion require operations described in Section 24251(b) to obtain permits. The board may promulgate such rules and regulations, as herein provided for, but in no event shall

a permit be denied an operator, operating orchard or citrus grove heaters, if such heaters produce unconsumed solid carbonaceous matter at the rate of one (1) gram per minute, or less.

(f) Repairs or maintenance not involving structural changes to any equipment for which a permit has been granted.

As used in this section, maintenance does not include operation.

24266. The air pollution control board may contract with the county, and may contract with any city within the air pollution control district, and the county and any such city may contract with the air pollution control district, for the performance of such work in the name of, and subject to the approval of, the air pollution control officer by the building department or other officer, department, or agency of the county or such city charged with the enforcement of regulations pertaining to the erection, construction, reconstruction, movement, conversion, alteration, or enlargement of buildings or structures, as will accomplish all or part of the purposes of Sections 24263 and 24264. The contract may provide for the consideration, if any, which the air pollution control district shall pay to such city.

24267. The air pollution control board may provide by regulation a schedule of fees not exceeding the estimated cost of issuing such permits and inspection pertaining to such issuance to be paid for the issuance of such permits. Every person applying for a permit shall pay the fee required by such schedule.

24268. A contract entered into pursuant to Section 24266 may provide that fees for permits shall be paid

to the city, the officer, department, or agency of which city issues the permit, and may be retained by such city in whole or in part as the consideration, or part thereof, for issuing such permits. Otherwise, all fees paid for the issuance of permits shall be paid into the district treasury.

24269. The air pollution control officer at any time may require from an applicant for, or holder of any permit provided for by the regulations of the air pollution control board, such information, analyses, plans, or specifications as will disclose the nature, extent, quantity, or degree of air contaminants which are or may be discharged by such source.

24270. If the holder of any permit provided for by the regulations of the air pollution control board within a reasonable time wilfully fails and refuses to furnish to the air pollution control officer information, analyses, plans, or specifications requested by such air pollution control officer, the air pollution control officer may suspend the permit. He shall serve notice in writing of such suspension and the reasons therefor on the permittee.

24271. Within 10 days after receipt of notice of suspension the permittee may file with the hearing board a demand for a public hearing as to whether or not the permit was properly suspended.

24272. The air pollution control officer shall reinstate a suspended permit when all information, analyses, plans, and specifications are furnished.

24273. The air pollution control officer may reinstate a suspended permit where, in his opinion, good reasons exist therefor.

24274. The air pollution control officer may request the hearing board to hold a public hearing to determine whether a permit should be revoked, or a suspended permit should be reinstated.

24275. Within 30 days after either the air pollution control officer or the permittee has requested a public hearing, the hearing board shall hold such a hearing and give notice of the time and place of such hearing to the permittee, to the air pollution control officer and to such other persons as the hearing board deems should be notified, not less than 10 days before the date of the public hearing.

24276. After a public hearing, the hearing board may:

(a) Continue the suspension of a permit suspended by the air pollution control officer, or

(b) Remove the suspension of an existing permit invoked by the air pollution control officer pending the furnishing by the permittee of the information, analyses, plans, and specifications required, or

(c) Find that no violation exists and reinstate an existing permit, or

(d) Revoke an existing permit, if it finds:

(1) The permittee has failed to correct any conditions required by the air pollution control officer, or

(2) A refusal of a permit would be justified, or

(3) Fraud or deceit was employed in the obtaining of the permit, or

(4) Any violation of this chapter or of any rule or regulation of the air pollution control board.

24277. Every person is guilty of a misdemeanor who knowingly makes any false statement in any application

for a permit or in any information, analyses, plans, or specifications submitted either in conjunction therewith, or at the request of the air pollution control officer.

24278. Every person is guilty of a misdemeanor who builds, erects, alters, replaces, uses, or operates any source capable of emitting air contaminants for which a permit is required by the regulations of the air pollution control district when his permit so to do has been either suspended or revoked.

24279. Every person required by the regulations of the air pollution control board to obtain a permit so to do who, without first obtaining such permit, builds, erects, alters, replaces, uses, or operates any source capable of emitting air contaminants, is guilty of a misdemeanor.

24280. Every person is guilty of a misdemeanor who builds, erects, alters, or replaces, operates or uses any such article, machine, equipment, or other contrivance contrary to the provisions of any permits issued under regulations adopted pursuant to this article.

24281. Every person violating any order, rule, or regulation of an air pollution control district is guilty of a misdemeanor. Every day during any portion of which such a violation occurs in a separate offense.

24282. Every permittee who wilfully fails or neglects to furnish information, analyses, plans, or specifications required by the air pollution control officer is guilty of a misdemeanor.

## Article 5. Variances.

24291. The provisions of this chapter do not prohibit the discharge of air contaminants to a greater extent or for a longer time, or both, than permitted by Article 3 of this chapter or by rules, regulations, or orders of the air pollution control board, if not of a greater extent or longer time than the hearing board or a court after a hearing before the hearing board finds necessary pursuant to the provisions of this article.

24292. The hearing board on its own motion or at the request of any person may hold a hearing to determine under what conditions and to what extent a variance from the requirements established by Article 3 of this chapter or by rules, regulations, or orders of the air pollution control board is necessary and will be permitted.

24293. The air pollution control board may provide, by regulation, a schedule of fees which will yield a sum not exceeding the estimated cost of the administration of this article, for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by such regulations.

24294. All such fees shall be paid into the district treasury.

24295. The hearing board shall serve a notice of the time and place of a hearing to grant a variance upon the air pollution control officer and upon the applicant, if any, not less than 10 days prior to such hearing.

24296. If the hearing board finds that because of conditions beyond control compliance with Article 3 of this chapter or with any rule, regulation, or order of

the air pollution control board will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without a sufficient corresponding benefit or advantage to the people in the reduction of air contamination, it shall prescribe other and different requirements not more onerous applicable to plants and equipment operated either by named classes of industries or persons, or to the operation of separate persons; provided, however, that no variance may permit or authorize the maintenance of a nuisance.

24297. In determining under what conditions and to what extent a variance from said requirements is necessary and will be permitted, the hearing board shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the district and to any lawful business, occupation or activity involved, resulting from requiring compliance with said requirements or resulting from granting a variance.

24298. The hearing board may revoke or modify by written order, after a public hearing held upon not less than 10 days' notice, any order permitting a variance.

24299. The hearing board shall serve notice of the time and place of a hearing to revoke or modify any order permitting a variance not less than 10 days prior to such hearing upon the air pollution control officer, upon all persons who will be subjected to greater restrictions if such order is revoked or modified as proposed and upon all other persons interested or likely to be affected who have filed with the hearing board or air pollution control officer a written request for such notification.

24300. The hearing board shall serve a notice of the time and place of a hearing to grant a variance or to revoke or modify an order permitting a variance either by personal service or by first class mail, postage prepaid, as provided by Section 15. If either the identity or address of any person entitled to notice is unknown, the hearing board shall serve such person by publication of notice once in a newspaper of general circulation published within the air pollution control district if such newspaper is published therein, otherwise by posting at a public place at the county seat within the district.

24301. The hearing board in making any order permitting a variance may specify the time during which such order will be effective, in no event to exceed one year, but such variance may be continued from year to year without another hearing on the approval of the air pollution control officer.

24302. If any local county or city ordinance has provided regulations similar to those in Article 3 of this chapter or to any order, regulation, or rule prescribed by the air pollution control board, and has provided for the granting of variances, and pursuant to such local ordinance a variance has been granted prior to the adoption of a resolution by the board of supervisors pursuant to Article 1 of this chapter, such variance shall be continued as a variance of the hearing board for the time specified therein or one year whichever is shorter or until and unless prior to the expiration of such time the hearing board modifies or revokes such variance as provided in this article.

Article 6. Procedure.

24310. This article applies to all hearings which either Article 4 or Article 5 of this chapter provides shall be held by the hearing board.

24311. The hearing board shall select from its number a chairman.

24312. The hearing board may hold a hearing in blank or may designate two or one of their number to hold a hearing.

24313. If two or three members of the hearing board conduct a hearing the concurrence of two shall be necessary to a decision.

24314. The hearing board not less than two being present may, in its discretion, within 30 days rehear any matter which was decided by a single member.

24315. Whenever the members of the hearing board conducting any hearing deem it necessary to examine any person as a witness at such hearing, the chairman of the hearing board shall issue a subpena, in proper form, commanding such person to appear before it at a time and place specified to be examined as a witness. The subpena may require such person to produce all books, papers, and documents in his possession or under his control material to such hearing.

24316. A subpena to appear before the hearing board shall be served in the same manner as a subpena in a civil action.

24317. Whenever any person duly subpenaed to appear and give evidence or to produce any books and papers before the hearing board neglects or refuses to appear, or to produce any books and papers, as required by the

subpena, or refuses to testify or to answer any question which the hearing board decides is proper and pertinent, he shall be deemed in contempt, and the hearing board shall report the fact to the judge of the superior court of the county.

24318. Upon receipt of the report, the judge of the superior court shall issue an attachment directed to the sheriff of the county where the witness was required to appear and testify, commanding the sheriff to attach such person and forthwith bring him before the judge who ordered the attachment issued.

24319. On the return of the attachment and the production of the body of the defendant, the judge has jurisdiction of the matter. The person charged may purge himself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpenaed to appear and give evidence on the trial of a civil cause before a superior court.

24320. Every member of the hearing boar may administer oaths in every hearing in which he participates.

24321. At any hearing the hearing board may require all of any witnesses to be sworn before testifying.

24322. Any person deeming himself aggrieved, including the air pollution control district, may maintain a special proceeding in the superior court, to determine the reasonableness and legality of any action of the hearing board.

24323. Any person filing such a special proceeding after any decision of the hearing board shall be entitled to a trial de novo and an independent determination of

the reasonableness and legality of such action in such court on all issues of law, facts, and mixed questions of law and facts and opinions therein involved.

STATS. 1949, C. 1185, P. 2105 *et seq.*

24330. Two or more contiguous counties having activated air pollution control districts under this chapter may merge their several districts into one district, under the provisions of this article.

24331. The board of supervisors of each county may by a vote of its members appoint two of its members to meet with an equal number appointed in a like manner from the other counties and agree to form one district, which agreement, upon ratification by the several boards of supervisors, shall create one district out of the several districts. Such agreement shall provide for the voting procedure on the air pollution control board.

24332. The boundaries of the unified air pollution control district shall be the same as the boundaries of the several counties of which it is comprised.

24333. Each county within the unified district shall be a zone of that district.

24334. The powers of the district shall be as provided in this chapter unless provided otherwise by this article.

24335. The boards of supervisors of the several zones comprising the unified district shall be, ex officio, the air pollution control board of the district.

24336. All county officers, their assistants, clerks, deputies, and employees of the several counties in the district and all other county employees of the zones within the district shall be ex officio officers, assistants,

deputies, clerks and employees of the district only within the zone in which they are employed.

24337. The boards of supervisors of each zone in the district shall appropriate such funds as are necessary to carry out the purposes of such air pollution control districts, as determined by the air pollution control board, in the proportion that the population of said zone at the date of merger bears to the total population of the district at the date of merger.

24338. All such appropriations are legal charges against the county in which the board of supervisors voted the appropriation.

24339. The treasurers of the several counties within the district shall pay the amount appropriated by the board of supervisors of their county into the treasury of the district.

24340. The district treasury shall be in the custody of the county treasurer of the largest zone, in terms of population at the date of merger, in the district and said treasurer shall be the unified air pollution control district treasurer.

24341. Whenever any person duly subpenaed to appear and give evidence or to produce any books and papers before the hearing board neglects or refuses to appear, or to produce any books and papers, as required by the subpena, or refuses to testify or to answer any question which the hearing board decides is proper and pertinent, he shall be deemed in contempt, and the hearing board shall report the fact to the judge of the superior court of the county in which the persons resides.

STATS. 1955, C. 1300, P. 2370.

*An act to add Section 24254 to the Health and Safety Code, relating to air pollution control districts and the preservation of the public health and safety.*

[Approved by Governor June 24, 1955. Filed with Secretary of State June 24, 1955.]

*The People of the State of California do enact as follows:*

SECTION 1. Section 24254 is added to the Health and Safety Code, to read:

24254. Notwithstanding any other provision of law to the contrary, no state or local governmental agency, or any officer or employee thereof, shall be criminally liable or responsible under the provisions of this chapter for any acts done by such governmental agency in the performance of its functions or by such officers or employees in the performance of their duties. No criminal action shall hereafter be maintained or prosecuted for such acts, and all criminal actions heretofore instituted for such acts shall be dismissed. Any violation of any provision of this chapter or of any order, rule, or regulation of the air pollution control board by any governmental agency, or by any officer or employee thereof, may be enjoined in a civil action brought in the name of the people of the State of California.

CHAPTER 1797, STATUTES OF 1955.

*An act to add Chapter 2.5 to Division 20 of, and to add Section 24213 and 24214 to, the Health and Safety Code, creating the Bay Area Air Pollution Control District, setting forth its organization, powers, and duties, all relating to the control of air pollution.*

[Approved by Governor July 7, 1955, Filed with Secretary of State July 8, 1955.]

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 2.5 is added to the Health and Safety Code, to read:

CHAPTER 2.5. BAY AREA AIR POLLUTION CONTROL DISTRICT.

Article 1. Short Title.

24345. This chapter may be cited and shall be known as the Bay Area Air Pollution Control Law.

Article 2. Declaration of Policy.

24346. The Legislature finds and declares that the people of the State of California have a primary interest in atmospheric purity and freedom of the air from any air contaminants and that there is pollution of the atmosphere in certain portions of the State which is detrimental to the public peace, health, safety, and welfare of the people of the State.

24346.1. The Legislature further finds and declares:

(a) That in portions of the State the air is polluted with smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, particulate matter, and other air contaminants.

(b) That it is not practical or feasible to prevent or reduce such air contaminants by local county and city ordinances.

(c) That it is necessary, therefore, to provide for air pollution control districts in those portions of the State where regulations are necessary and feasible to reduce air contaminants in order to safeguard life, health, property and the public welfare and to make possible the comfortable enjoyment of life and property.

24346.2. The problems of air pollution are primarily regional and dependent upon factors of weather, topography, population, transportation, methods of waste disposal, and agricultural and industrial development. These factors vary greatly from area to area. The San Francisco Bay area, with its permanent temperature inversion layer, presents a special problem, distinct from that found in the remainder of the State. This chapter is enacted to provide a special district to control and suppress air pollution in that area.

Since the problem requiring this legislation is local and special due to atmospheric and geographic conditions, a general law cannot be made applicable so as to insure its effective alleviation. It is necessary, therefore, to create, by special law, an air pollution control district which includes only that area within the boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

Article 3. Definitions.

24348. "District," as used in this chapter, means the Bay Area Air Pollution Control District.

24348.1. "Board," as used in this chapter, means the board of directors of the district.

24348.2. "Control officer," as used in this chapter, means the air pollution control officer of the district.

24348.3. "Air contaminant," as used in this chapter, includes smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, mist, odors, or particulate matter, or any combination thereof.

Article 4. Creation of District.

24350. An air pollution control district is hereby created comprising the area lying within the boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma, which shall be called the Bay Area Air Pollution Control District.

24350.1. The district is a body corporate and politic and a public agency of the State.

24350.2. On the effective date of this chapter, the district shall begin to transact business and exercise its powers under this chapter in the Counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara.

24350.3. The district shall not transact any business or exercise any of its powers under any of this chapter in the Counties of Napa, Solano, and Sonoma until and unless the boards of supervisors of such counties determine in the manner provided by this article that there is need for the district to function in such counties and so declare by resolution.

24350.4. Before the district may begin to transact business or exercise its powers in Napa County, Solano County, or Sonoma County, the board of supervisors of such county, on its own motion, or whenever a petition

requesting that the district transact business and exercise its powers in such county signed by not less than 10 percent of the qualified electors of such county is presented to such board of supervisors, shall hold a public hearing to determine whether or not there is need for the district to function in such county.

24350.5. Prior to the public hearing, the board of supervisors shall give notice of the time and place of hearing by publication pursuant to Section 6061 of the Government Code not less than 15 days nor more than 45 days before such hearing.

24350.6. Upon conclusion of the public hearing the board of supervisors may adopt a resolution declaring that there is need for the district to function in such county if from the evidence received at such hearing it finds that it is in the best interests of such county that the district function therein.

24350.7. Upon adoption of the resolution the board of supervisors of such county shall cause a certified copy of it to be filed with the board.

24350.8. From and after the date of the filing of the certified copy of the resolution with the board, the district shall begin to function and may exercise its powers within such county.

Article 4.5. City Selection Committees.

24351. There shall be a separate and distinct city selection committee for each county in which the district may transact business and exercise its powers. The membership of such committees shall consist of the mayor of each city within such county, or, where there is no mayor, the chairman or the president of the city council.

24351.1. A majority of the members of each city selection committee shall constitute a quorum.

24351.2. The City and County of San Francisco is a city for purposes of this article.

24351.3. The city selection committee of each county shall meet on October 28, 1955, at 10 a.m. in the chambers of the board of supervisors of such county for the purpose of making the first appointment to the district board as prescribed in Section 24352. The committee of each county shall thereafter meet on the second Monday in May of each even-numbered year, at 10 a.m. in the chambers of the board of supervisors of such county, for the purpose of making succeeding appointments to the district board as prescribed in Section 24352.1. At least two weeks prior to the date of each meeting the county clerk of each county shall give notice of such meeting to each member of the city selection committee of such county. The meeting of the city selection committee of each county shall be conducted in the presence of the county clerk of such county who shall act as the recording officer for the meeting. It shall be the duty of the county clerk to notify in writing the board of supervisors of such county and also the clerk of the district board of the appointment made by the city selection committee within 10 days after such appointment has been made.

24351.4. Each committee shall appoint a chairman from among its members and such other officers as may be necessary.

24351.5. Members of the committees shall serve without compensation, but may be allowed actual expenses incurred in the discharge of their duties.

Article 5. Governing Body.

24352. The governing body of the district is a board of directors who shall be selected as provided in this article.

On or before October 28, 1955, the board of supervisors of each county in which the district may at that time transact business and exercise its powers shall appoint one of its members to be a member of the board. If the district may not transact business or exercise its powers in any county within the district on October 28, 1955, the board of supervisors of such county shall appoint one of its members to be a member of the board within 30 days after the district may so function within such county.

On October 28, 1955, the city selection committee of each county shall appoint one member of the board. Such member shall be selected from among the mayors and city councilmen of the cities within such county. If the district may not transact business or exercise its powers in any county within the district on October 28, 1955, the city selection committee shall so appoint such member of the board within 30 days after the district may so function within such county.

24352.1. Each member of the first board shall hold office until June 1, 1956, and thereafter each member appointed by the board of supervisors shall hold office for a term of four years and until the appointment and qualification of his successor and each member appointed by the city selection committee shall hold office for two years and until the appointment and qualification of his successor. Any vacancy on the board shall be filled by appointment in the same manner as the vacating member

was appointed. Any member of the board may be removed at any time in the same manner as he was appointed; provided, however, that if four-fifths of the members of the board of supervisors of a county request the removal of a member appointed by the city selection committee of such county, the city selection committee of such county shall meet within 20 days to consider the removal of such member.

24352.2. Any member of the board may be recalled from his office of member of the board of supervisors or of mayor or member of the legislative body of a city pursuant to Division 13 of the Elections Code, in which event his office as member of the board shall be vacant.

24352.3. The board is the governing body of the district and shall exercise all the powers of the district, except as otherwise provided.

24352.4. A majority of the members of the board constitutes a quorum for the transaction of business and may act for the board.

24352.5. Each member of the Board shall receive the actual and necessary expenses incurred by him in the performance of his duties, plus a compensation of twenty-five dollars ($25) for each day attending the meetings of the board, but such compensation shall not exceed six hundred dollars ($600) in any one year.

24352.6. The board may appoint an executive secretary to perform such duties as may be assigned to him by the board.

24352.7. The board may cooperate and contract with any federal, state, or local governmental agencies, private industries, or civic groups necessary or proper to the accomplishment of the purposes of this chapter.

Article 6. Powers and Duties.

24354. The district shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at its pleasure.

(d) To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.

(e) To lease, sell or dispose of any property or any interest therein whenever in the judgment of the board such property, or any interest therein, or part thereof, is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of the same for the purposes of the district, and to pay any compensation received therefor into the general fund of the district.

24354.1 The district shall establish and execute an effective program for the reduction of air contaminants within the district.

24354.2. The district shall do such acts as may be necessary to carry out the provisions of this chapter.

24354.3. The board shall establish and maintain such offices wherever it deems will best facilitate the accomplishment of the district objectives.

24354.4. The board shall meet at such times and places as decided by the board.

24354.5. The board shall appoint a chairman from its members and such other officers as may be necessary.

24354.6. The board shall determine the compensation of, and pay from district funds, the control officer, all of his personnel, the executive secretary, and members of the hearing board.

24354.7. The board shall provide for the number of personnel to be employed by the control officer and for their duties and the times at which they shall be appointed.

24354.8. The board may contract with any city or county, any state department, or any competent person or agency for the conducting of competitive examinations to ascertain the fitness of applicants for employment and for the performance of any other service in connection with administration of the district.

24354.9. The board may by ordinance adopt a civil service system for any or all employees of the district, except that the executive secretary and air pollution control officer shall be exempt from such system and shall serve at the pleasure of the board. The board may adopt regulations and by-laws for the organization and administration of the district and may, in such regulations, provide for amendment and repeal thereof.

24354.10. In exercising its powers and duties, the district shall, whenever feasible, secure necessary technical, administrative and operational services by contract with public agencies to the end that duplication of similar services and facilities is avoided to the extent possible. This section shall not be construed as requiring the board to contract for services which the board determines should, in the best interest of the district, be provided by the district or services which can be provided by the district at a lesser cost than by contract.

Article 7. Air Pollution Control Officer.

24355. The board shall appoint an air pollution control officer.

24355.1. Subject to the provisions of Article 6, the control officer shall appoint his personnel.

24355.2. The control officer shall observe and enforce:

(a) The provisions of this act.

(b) All orders, regulations, and rules prescribed by the board.

(c) All variances and standards which the hearing board has prescribed.

Article 8. Advisory Council.

24356. The board shall appoint a Bay Area Air Pollution Control Advisory Council to advise and consult with the board and the control officer in effectuating the purposes of this chapter. The council shall consist of the chairman of the board, who shall serve as an ex officio member, and 20 members who preferably are skilled and experienced in the field of air pollution, including at least one representative of colleges or universities in the State and at least one representative of each of the following groups within the district: health agencies, agriculture, industry, community planning, transportation, registered professional engineers, general contractors, architects, and organized labor.

24356.1. The council shall select a chairman and vice chairman and such other officers as it deems necessary.

24356.2. Council members shall serve without compensation but may be allowed actual expenses incurred in the discharge of their duties. The council shall meet as frequently as the directors of the council deem necessary.

24357. Within 30 days after the district, by resolution, determines it necessary to adopt rules and regulations to control the release of air contaminants, the district board shall appoint a hearing board, to consist of three members, none of whom is otherwise employed by the district. One member shall have been admitted to practice law in this State. One member shall be a chemical or mechanical engineer.

24357.1. The district board shall appoint one member of the hearing board for a term of one year, one for a term of two years, and one for a term of three years. Thereafter the terms of members of the hearing board shall be three years.

Article 10. Enforcement.

24360. A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.

24360.1. This article does not apply to smoke from fire set by or permitted by any public officer if such fire is set or permission given in the performance of the official duty of such officer, for the purpose of weed abatement, the prevention of a fire hazard, or the instruction of public employees in the methods of fighting fire, which is, in the opinion of such officer, necessary.

24360.2. This article does not apply to smoke from agricultural fires set by, or permitted by, the county

agricultural commissioner of any county within the district after consultation with the board, if such fire is set or permission given in the performance of the official duty of such county agricultural commissioner for the purpose of disease prevention.

24360.3. The Legislature does not, by the provisions of this chapter, intend to occupy the field.

The provisions of this chapter do not prohibit the enactment or enforcement by any county or city of any local ordinance stricter than the provisions of this article and stricter than the rules and regulations adopted pursuant to this chapter, which local ordinance prohibits, regulates or controls air pollution.

24360.4. The provisions of this chapter do not supersede any such local county or city ordinance.

24360.5. If it should be held that the provisions of this chapter supersede the provisions of any local county or city ordinance, such suspension shall not bar the prosecution or punishment of any violation of such ordinance which violation was committed when such ordinance was in full force and effect.

24360.6. Nothing in this article limits in any way the power of the board to make needful orders, rules, and regulations pursuant to other provisions of this chapter. Nothing in this article permits any action contrary to any such order, rule, or regulation.

24360.7. Any violence of any provisions of this article or of any order, rule, or regulation of the board may be enjoined in a civil action brought in the name of the people of the State of California.

24360.8. The provisions of Section 24360 relating to odors do not apply to odors emanating from agricultural operations in the growing of crops or raising of fowls or animals.

Article 11. Rules and Regulations.

24362. At any time after October 1, 1956, the board may by resolution declare it necessary that the district adopt rules and regulations to control the release of air contaminants in order to reduce or alleviate air pollution within the district. Such determination shall be based on surveys and studies made by the district and such other information as may be available to the district. The determination shall be made only after the board has considered the matter at a public hearing at which all interested persons are afforded the opportunity to appear and urge or oppose adoption of the resolution. The board shall give notice of its intention to adopt the resolution and give notice of the hearing by publication pursuant to Section 6061 of the Government Code in each of the counties within the district not less than 10 days prior to the hearing. The notice shall contain the time and place of the hearing and such other information as may be necessary to reasonably apprise the people within the district of the nature and purpose of the meeting. The hearing may be adjourned from time to time in order to permit presentation of all pertinent testimony.

Upon the conclusion of the hearing, if the board determines it to be necessary to adopt rules and regulations to control the release of air contaminants, the board shall so declare by resolution.

24362.1. At any time after the resolution of necessity has been adopted, the board may make and enforce all

needful orders, rules, and regulations necessary or proper to accomplish the purposes of this chapter.

24362.2. The board shall not enact any order, rule or regulation until it first holds a public hearing thereon. It shall give not less than 10 days' notice of the time and place of such public hearing by publication in the district pursuant to Section 6061 of the Government Code.

24362.3. Whenever the board finds that the air in the district is so polluted as to cause discomfort or property damage at intervals to a substantial number of inhabitants of the district, the board may make and enforce such general orders, rules, and regulations as will reduce the amount of air contaminants released within the district, but no order, rule or regulation of the board shall specify the design of equipment, type of construction, or particular method to be used in reducing the release of air contaminants.

24362.4. The control officer at any time may require from any person subject to regulations of the board, such information or analyses as will disclose the nature, extent, quantity, or degree of air contaminants which are or may be discharged by such source, and may require that such disclosures be certified by a professional engineer registered in the State. In addition to such report, the control officer may designate and employ a registered professional engineer of his choice to make an independent study and report as to the nature, extent, quantity, and degree of any air contaminants which are or may be discharged from the source. An engineer so designated is authorized to inspect any article, machine, equipment or other contrivance necessary to make the inspection and report.

24362.5. If any person within a reasonble time wilfully fails or refuses to furnish to the control officer information or analyses requested by such control officer, or if the control officer finds that any order, rule or regulations of the board is being violated after a reasonable time has been allowed for compliance, the control officer shall notify the hearing board of such facts and request a public hearing on the matter.

24362.6. Within 30 days after the control officer has requested a public hearing, the hearing board shall hold such a hearing and give notice of the time and place of such hearing to the person cited, to the control officer and to such other persons as the hearing board deems should be notified, not less than 10 days before the date of the public hearing.

24362.7. After a public hearing, the hearing board may find that no violation exists, or may take any of the actions provided in Article 12 and Article 13 of this chapter.

## Article 12. Variances.

24365. The provisions of this chapter do not prohibit the discharge of air contaminants to a greater extent or for a longer time, or both, than permitted by Article 10 or by rules, regulations, or orders of the board, if not of a greater extent or longer time than the hearing board or a court after a hearing before the hearing board finds necessary pursuant to the provisions of this article.

24365.1. The hearing board on its own motion or at the request of any person may hold a hearing to determine under what conditions and to what extent a variance from the requirements established by Article 10 or by

rules, regulations, or orders of the board is necessary and will be permitted.

24365.2. The board may provide, by regulation, a schedule of fees which will yield a sum not exceeding the estimated cost of the administration of this article, for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by such regulations.

24365.3. All such fees shall be paid to the district treasurer to the credit of the district.

24365.4. The hearing board shall serve a notice of the time and place of a hearing to grant a variance upon the control officer and upon the applicant, if any, not less than 10 days prior to such hearing.

24365.5. If the hearing board finds that because of conditions beyond control compliance with Article 10 or with any rule, regulation, or order of the air pollution control board will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without a sufficient corresponding benefit or advantage to the people in the reduction of air contamination, it shall prescribe other and different requirements not more onerous applicable to plants and equipment operated either by named classes of industries or persons, or to the operation of separate persons; provided, however that no variance may permit or authorize the maintenance of a nuisance.

24365.6. In determining under what conditions and to what extent a variance from said requirements is necessary and will be permitted, the hearing board shall exercise a wide discretion in weighing the equities involved

and the advantages and disadvantages to the residents of the district and to any lawful business, occupation or activity involved, resulting from requiring compliance with said requirements or resulting from granting a variance.

24365.7. The hearing board may revoke or modify by written order, after a public hearing held upon not less than 10 days' notice, any order permitting a variance.

24365.8. The hearing board shall serve notice of the time and place of a hearing to revoke or modify any order permitting a variance not less than 10 days prior to such hearing upon the control officer, upon all persons who will be subjected to greater restrictions if such order is revoked or modified as proposed and upon all other persons interested or likely to be affected who have filed with the hearing board or control officer a written request for such notification.

24365.9. The hearing board shall serve a notice of the time and place of a hearing to grant a variance or to revoke or modify an order permitting a variance either by personal service or by first-class mail, postage prepaid. If either the identity or address of any person entitled to notice is unknown, the hearing board shall serve such person by publication of notice in the district pursuant to Section 6061 of the Government Code.

24365.10. The hearing board in making any order permitting a variance may specify the time during which such order will be effective, in no event to exceed one year, but such variance may be continued from year to year without another hearing on the approval of the control officer.

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24365.11. If any local county or city ordinance has provided regulations similar to those in Article 10 or to any order, regulation, or rule prescribed by the board, and has provided for the granting of variances, and pursuant to such local ordinance a variance has been granted prior to notification of the district, such variance shall be continued as a variance of the hearing board for the time specified therein or one year, whichever is shorter, or until and unless prior to the expiration of such time the hearing board modifies or revokes such variance as provided in this article.

## Article 13. Procedure.

24367. This article applies to all hearings which either Article 11 or Article 12 of this chapter provides shall be held by the hearing board.

24367.1. The hearing board shall select from its number a chairman.

24367.2. The hearing board may hold a hearing in bank or may designate two or one of their number to hold a hearing.

24367.3. If two or three members of the hearing board conduct a hearing the concurrence of two shall be necessary to a decision.

24367.4. The hearing board, not less than two being present, may, in its discretion, within 30 days rehear any matter which was decided by a single member.

24367.5. Whenever the members of the hearing board conducting any hearing deem it necessary to examine any person as a witness at such hearing, the chairman of the hearing board shall issue a subpena, in proper form, commanding such person to appear before it at a time and place specified to be examined as a witness. The

subpena may require such person to produce all books, papers, and documents in his possession or under his control material to such hearing.

24367.6. A subpena to appear before the hearing board shall be served in the same manner as a subpena in a civil action.

24367.7. Whenever any person duly subpenaed to appear and give evidence or to produce any books and papers before the hearing board neglects or refuses to appear, or to produce any books and papers, as required by the subpena, or refuses to testify or to answer any question which the hearing board decides is proper and pertinent, he shall be deemed in contempt, and the hearing board shall report the fact to the judge of the superior court of the county in which the person resides.

24367.8. Upon receipt of the report, the judge of the superior court shall issue an attachment directed to the sheriff of the county where the witness was required to appear and testify, commanding the sheriff to attach such person and forthwith bring him before the judge who ordered the attachment issued.

24367.9. On the return of the attachment and the production of the body of the defendant, the judge has jurisdiction of the matter. The person charged may purge himself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpenaed to appear and give evidence on the trial of a civil cause before a superior court.

24367.10. Every member of the hearing board may administer oaths in every hearing in which he participates, and at any hearing the hearing board may require all or any witnesses to be sworn before testifying.

24367.11. Whenever the hearing board finds that any person is in violation of any order, rule or regulation of the board, and that no variance is justified, and that reasonable time has been allowed for compliance, the hearing board shall certify such facts to the district attorney for the county in which the discharge originates, whereupon such district attorney shall petition the superior court in and for the county for the issuance of an injunction restraining such person or persons from continuing any activity causing or threatening a pollution or nuisance. The court shall thereupon issue an order directing the person to appear before the court and show cause why the injunction should not be issued. Thereafter the court shall have jurisdiction of the matter, and proceedings thereon shall be conducted in the same manner as in any other action brought for an injunction. The court shall receive in evidence any order, rule or regulation of the board, any transcript of the proceedings before the hearing board, and such further evidence as the court in its discretion deems proper.

24367.12. Any person deeming himself aggrieved, including the district, may maintain a special proceeding in a superior court within the district, to determine the reasonableness and legality of any action of the hearing board.

24367.13. In such a special proceeding after any decision of the hearing board the court is authorized to exercise its independent judgment on the evidence and to make an independent determination of the reasonableness and legality of such action in such court on all issues of law, facts, and mixed questions of law and facts, and opinions therein involved.

Article 14. Financial Provisions.

24370. The district may borrow money and incur indebtedness in anticipation of the revenue for the current year in which the indebtedness is incurred or of the ensuing year. Such indebtedness shall not exceed the total amount of the estimate of the tax income for either the current year or the ensuing year.

24370.1. Before the fifteenth day of June of each year the board shall estimate and determine the amount of money required by the district for purposes of the district during the ensuing fiscal year and shall apportion this amount to the counties included within the district, one-half according to the relative value of the real estate of each county within the district as determined by the board and one-half in the proportion that the population of each county bears to the total population of the district. For the purposes of this section the board shall base its determination of the population of the several counties on the latest official information available to it. The total amount of money required by the district for district purposes during any one fiscal year shall not exceed one cent ($0.01) on each one hundred dollars ($100) of the assessed valuation of all the property included within the district.

24370.2. On or before the fifteenth day of June of each year, the board shall inform the boards of supervisors of each county of the amount apportioned to the county. Each Board of supervisors shall levy an ad valorem tax on the taxable property, but not including intangible personal property, within the county included within the district sufficient to secure the amount so apportioned to it and such taxes shall be levied and col-

lected together with, and not separately from, the taxes for county purposes and paid to the treasurer of each of the counties to the credit of the district.

24370.3. Taxes levied by the board of supervisors for the benefit of the district shall be a lien upon all property within such county lying within the district and shall have the same force and effect as other liens for taxes. Their collection may be enforced in the same manner as liens for county taxes are enforced.

24370.4. At any time prior to the first receipt by the district of revenues from taxation, the counties within the district may loan any available money to the district for purposes of organization and operation and such expenditures shall constitute a proper expenditure of county funds. The board shall add the sums of money so borrowed from the counties to the first amount apportioned by the board pursuant to Section 24370.1, and shall repay the counties for all money borrowed from the first revenues received from taxation.

24370.5. The treasurers of the several counties within the district shall pay into the district treasury all funds held by them to the credit of the district.

24370.6 The district treasury shall be in the custody of the county treasurer of a county in the district designated by the board and such treasurer shall be the district treasurer.

24370.7. The district board shall, in carrying out the provisions of this article, comply as nearly as possible with the provisions of Chapter 1 of Division 3 of Title 3 of the Government Code.

Article 15. Dissolution.

24372. A district may be dissolved in the following manner:

1. The boards of supervisors of the counties containing more than fifty percent (50%) of the population of the entire district shall adopt a resolution stating that the existence of the district is no longer necessary or desirable for the public welfare, and announcing the intention to withdraw therefrom and to dissolve the district.

2. The resolutions so adopted shall be communicated to the clerks of the boards of supervisors of all counties comprising the district and also to the board.

3. If it appears that the resolutions were adopted by the boards of supervisors in the counties desiring to withdraw, and that such counties contain more than fifty percent (50%) of the entire population in the district, the board, by resolution, shall call an election to determine the question of dissolution. The resolution shall state the time and place and purpose thereof, establish election precincts, designate polling places, and appoint election officers and, in all respects not provided in this section, the election shall be held and conducted, as nearly as practicable, in the same manner as elections for county officers in the counties. In the event such election shall be consolidated with any other election, the resolution calling the election hereunder need not describe the precincts, polling places, or appoint officers of election, but may refer to the ordinance, order, resolution or notice calling or providing for such other election, or listing or designating the precincts, polling places, and election officers therefor for the precincts, polling places, and officers of election for the election called hereunder. Such resolution

shall be published pursuant to Section 6066 of the Government Code in each county within the district and the first publication shall be at least 30 days prior to the date of election.

4. If a majority of the qualified electors voting at such election vote in favor of such dissolution, the board shall declare the results of the election, proceed to wind up the affairs of the district, and pay all indebtedness thereof. Any surplus funds shall be paid over to the counties in which the district lies in proportion to the amount last previously apportioned by the board to each county for purposes of levying taxes. The board shall exercise only such powers and secure such revenue from taxation as shall be necessary to wind up the affairs of the district.

5. Upon the completion of the process of winding up the affairs of the district, the board shall, by resolution, entered upon its minutes, declare the district dissolved. A certified copy of such resolution shall be filed with the county recorder of each county within the district and with the Secretary of State. Upon the adoption of such resolution the district shall be dissolved.

SEC. 3. Section 24213 is added to the Health and Safety Code, to read:

24213. An air pollution control district which is situated in any county included within another air pollution control district created by special law shall cease to function and exercise its powers upon the date of any rules and regulations adopted by governing body of such special district.

SEC. 4. Section 24214 is added to the Health and Safety Code, to read:

24214. When an air pollution control district ceases to function and exercise its powers pursuant to Section 24213, the property of such district shall vest in the county in which the district is located, and any funds belonging to such district at that time shall be transferred to such county and may be used for general county purposes.

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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1957

**No. 853**

FRANK W. BABCOCK,
*Appellant,*

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
*Appellee.*

## BRIEF IN OPPOSITION TO MOTION TO AFFIRM THE ORDER AND/OR DISMISS THE APPEAL HEREIN.

AUSTIN CLAPP,
1780 Portola Road, Woodside, California,
*Attorney for Appellant.*

## Subject Index


Page

Argument ..... 1

I.

There was no state ground upon which the decision of the Appellate Department of the Superior Court could have rested ..... 1

II.

The decision of the Appellate Department of the Superior Court is not correct ..... 5


## Table of Authorities Cited


| Cases | Pages |
|---|---|
| Alves v. Justice's Court, 148 Cal. App. 2d 419 | 2 |
| American River Flood Control District v. Sweet, 214 Cal. 778 | 3, 4 |
| Dominion Hotel v. State of Arizona, 249 U.S. 265, 39 S.Ct. 273, 63 L.ed. 597 | 5 |
| Goesaert v. Cleary, 335 U.S. 464, 69 S.Ct. 198, 93 L.ed. 163 | 5 |
| Mayflower Farms v. Ten Eyck, 297 U.S. 266, 56 S.Ct. 457, 80 L.ed. 675 | 6 |
| Morey v. Doud, 354 U.S. 457, 77 S.Ct. 1344, 1 L.ed. 2d 1485 | 7 |
| Ocampo v. United States, 234 U.S. 291, 34 S.Ct. 712, 58 L.ed. 1231 | 7 |

Pages

People v. Alvidrez, 158 A.C.A. 317 ..... 2

Salsbury v. Maryland, 346 U.S. 545, 74 S.Ct. 280, 98 L.ed. 281 ..... 7

Smith v. Cahoon, 283 U.S. 553, 57 S.Ct. 582, 75 L.ed. 1264 7

Stembridge v. Georgia, 343 U.S. 541, 72 S.Ct. 834, 96 L.ed. 1130 ..... 5

West Coast Hotel v. Parrish, 300 U.S. 379, 57 S.Ct. 578, 81 L.ed. 703 ..... 5

Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 75 S.Ct. 461, 99 L.ed. 563 ..... 5

**Constitutions**

California Constitution, Article IV, Section 25 ..... 2, 4

**Statutes**

Bay Area Air Pollution Control District Law (California Health and Safety Code) Division 20, Chapter 2.5 ..... 1

**Miscellaneous**

Assembly Interim Committee, Volume XIII, No. 4, submitted to the Assembly under date of March 4, 1955, page 40 ..... 3

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THE PEOPLE OF THE STATE OF CALIFORNIA,
*Appellee.*

## BRIEF IN OPPOSITION TO MOTION TO AFFIRM THE ORDER AND/OR DISMISS THE APPEAL HEREIN.

### ARGUMENT.

### I.

#### THERE WAS NO STATE GROUND UPON WHICH THE DECISION OF THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT COULD HAVE RESTED.

Appellee contends that the judgment and order appealed from might have rested on either of two State grounds: (1) That the Federal question was not properly before the Court; or (2) That the Bay Area Air Pollution Control District law (California, *Health and Safety Code*, Division 20, Chapter 2.5;

Jurisdictional Statement, Appendix, pp. 25, et seq.) violated Article IV, Section 25 of the *California Constitution,* and was therefore void, thereby eliminating the discrimination complained of by appellant.

These contentions are unsound.

California's general rule that points not raised in the trial Court will not be considered on appeal is subject to the exception, expressed in *People v. Alvidrez,* 158 A.C.A. 317, at p. 319,

> ". . . that the court will consider fundamental errors or gross irregularity where the error is of such nature and so substantial that an objection [in the trial court] would not have obviated it . . ."

The constitutionality of a statute under which a defendant may be tried, convicted and imprisoned is obviously such a fundamental question.

> ". . . An unconstitutional statute goes to the very jurisdiction of the court, and hence may be attacked at any stage of the proceedings."
>
> *Alves v. Justice's Court,* 148 Cal. App. 2d 419 at page 425 (Petition for hearing in the California Supreme Court denied).

It may be noted also that appellee made no such contention before the Appellate Department of the Superior Court.

We do not concur with appellee's surmise that the Court below could or did decide that the Bay Area Air Pollution Control law was not permitted by *California Constitution,* Article IV, Section 25 in view

of *American River Flood Control District v. Sweet*, 214 Cal. 778, in which the Court upheld the statute there in question against a similar challenge, saying, in part:

> "First, the general law is permissive only. The initiation of proceedings for the formation of such districts under general law must depend on the voluntary petition of landowners in the district. The landowners in the district might never file, or might indefinitely delay the filing of such a petition. Here the district is created by the special act. It has no alternative but to function and carry out the purposes of the act. . . ."

Similarly, in the case at bar, similar considerations existed for the passage of the act. In the report of the Assembly Interim Committee, Volume XIII, No. 4, submitted to the Assembly under date of March 4, 1955, page 40, it was stated that:

> "The statements of representatives from counties seriously considering the activation of air pollution control districts under present legislation at the sub-committee's formal hearing and at the various conferences support the following conclusions:
>
> 1. The smog problem is basin-wide and requires a basin-wide organization.
>
> 2. Present legislation makes possible the creation of such a district but is impracticable for the nine counties of the Bay Area and its use highly improbable.
>
> 3. Counties therefore are delaying activation under the existing legislation, awaiting realistic

amendments that would make the act useful to the region."

The legislative finding in the Bay Area Air Pollution Control law that: ". . . Since the problem requiring this legislation is local and special due to atmospheric and geographical conditions, a general law cannot be made applicable so as to insure its effective alleviation. It is necessary, therefore, to create by special law, an air pollution control district which includes only that area within the boundaries of . . . [nine named counties] seems to show that the legislature was conscious of its constitutional limitations, and intended, by the finding, to take the statute out of the Thirty-Third subdivision of Article IV, Section 25 of the California Constitution, prohibiting the passage of local or special laws: ". . . In all other cases where a general law can be made applicable.", and to bring the statute within the doctrine of the *American River Flood Control District* case, supra, p. 2.

We do not think it likely that the Court would or that it did invalidate the whole scheme of air pollution control for nine California counties merely to uphold the penal provisions of the statute governing five other counties, but rather that it thought that a valid classification had been made sufficient to justify the discrimination.

Indeed, were California here represented by her Attorney General, rather than by the City Attorney of the City of Los Angeles, we do not suppose that a contention of such a parochial nature would have been made.

The plain fact is that the Federal question was the only question argued to the Court below and decided by it.

*Stembridge v. Georgia*, 343 U.S. 541, 72 S.Ct. 834, 96 L.ed. 1130 is not in point since there the highest Court of the State had not been requested to rule on the question after amendment of the record in the intermediate Court to show that the Federal question had been dealt with.

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## II.

### THE DECISION OF THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT IS NOT CORRECT.

No attack has been made or will be made upon the power of the legislature to deal with air pollution. Nor do we quarrel with the principle that valid classification can justify discrimination between classes. Nor do we quarrel with the general language in appellee's Argument in support of her motion which has been paraphrased from *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 75 S.Ct. 461, 99 L.ed. 563; *West Coast Hotel v. Parrish*, 300 U.S. 379, 57 S.Ct. 578, 81 L.ed. 703; *Goesaert v. Cleary*, 335 U.S. 464, 69 S.Ct. 198, 93 L.ed. 163, or *Dominion Hotel v. State of Arizona*, 249 U.S. 265, 39 S.Ct. 273, 63 L.ed. 597.

We do maintain, however, that there is no room for surmise or speculation in this case; that we know what the legislature did, and for what reason. That the only reasons for the adoption of a separate statute were (1) to provide for the establishment and financial support of a workable administrative unit for

the nine Bay Area counties, and (2) to make the establishment of the district in six of the nine counties mandatory rather than permissive.

In such posture, to attempt to sustain the discrimination between persons committing identical acts, or owning identical equipment, or conducting identical operations, one in the Los Angeles District, and the other in the Bay Area District, on the conjecture that the legislature might have believed that evils in the same field were of different dimensions and proportions, or that different degrees of harm were involved, or that the two situations were different in fact or opinion, or that local conditions which the Court could not know justify the classification is to close one's eyes to the record which clearly shows what the legislature was trying to do, and did do, leaving no room for conjecture or surmise.

Except for the generalities above mentioned, and appellee's flat conclusion that ". . . the legislature could find that criminal punishment was unnecessary" (Motion, p. 6) appellee has not suggested any possible basis of classification between people, equipment or processes in the area subject to the separate acts.

Without some such suggestion it has been said that the Court has "no right to conjure up possible situations which might justify the discrimination . . .".

*Mayflower Farms v. Ten Eyck,* 297 U.S. 266, 274, 56 S.Ct. 457, 80 L.ed. 675.

And, even if some such suggestion should be made, to the effect that existing characteristics of people, equipment or processes in the Bay Area make the

imposition of criminal sanctions unnecessary, yet these characteristics, under continuing regulation, may change, removing what factual basis there might conceivably have been for the classification. This has been held to be a factor tending to invalidate a discriminatory law.

*Morey v. Doud,* 354 U.S. 457, 77 S.Ct. 1344, 1351, 1 L.ed. 2d 1485.

*Ocampo v. United States,* 234 U.S. 291, 34 S.Ct. 712, 58 L.ed. 1231, and *Salsbury v. Maryland,* 346 U.S. 545, 74 S.Ct. 280, 98 L.ed. 281, cited by appellee for the proposition that the constitutional guarantee of equal protection of the laws does not require territorial uniformity rest rather upon the ground that legislatures have a very wide discretion to prescribe mere matters of procedure.

We feel that the case at bar is governed by *Smith v. Cahoon,* 283 U.S. 553, 57 S.Ct. 582, 75 L.ed. 1264, and by *Morey v. Doud,* 354 U.S. 457, 77 S.Ct. 1344, 1 L.ed. 2d 1485, that the Federal question is substantial and was properly before and was decided by the Court from which this appeal was taken and that appellee's motion to affirm the order and/or dismiss this appeal should be denied.

Dated, Woodside, California,
April 22, 1958.

Respectfully submitted,
AUSTIN CLAPP,
*Attorney for Appellant.*

Office - Supreme Court, U.S.
FILED
APR 10 1958
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

October Term, 1957.

No. 853

FRANK W. BABCOCK,

*Appellant,*

*vs.*

THE PEOPLE OF THE STATE OF CALIFORNIA,

*Appellee.*

**On Appeal From the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles.**

## MOTION TO AFFIRM THE ORDER AND/OR DISMISS THIS APPEAL.

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## SUBJECT INDEX


PAGE

Statement ..... 2

Argument ..... 3

I.

The decision of the Appellate Department of the Superior Court is plainly correct ..... 3

II.

The Supreme Court of the United States should not take jurisdiction to review an order where no opinion was delivered by the highest state court ..... 7

Appendix. Pertinent statutes involved ..... App. p. 1

## TABLE OF AUTHORITIES CITED


| CASES | PAGE |
|---|---|
| Dominion Hotel v. State of Arizona, 249 U. S. 265, 39 S. Ct. 273, 63 L. Ed. 597 | 6 |
| Goesaert v. Cleary, 335 U. S. 464, 69 S. Ct. 198, 93 L. Ed. 163 | 6 |
| MacKenzie v. Angle, 82 Cal. App. 2d 254 | 7 |
| Moses v. United States, 16 App. D. C. 428, 50 L. R. A. 532 | 3 |
| Northwestern Laundry v. Des Moines, 239 U. S. 486, 36 S. Ct. 206, 60 L. Ed. 396 | 3 |
| Ocampo v. United States, 234 U. S. 91, 34 S. Ct. 712, 58 L. Ed. 1231 | 5 |
| People v. Alvidrez, 158 A. C. A. 317 | 7 |
| People v. International Steel Corp., 102 Cal. App. 2d (Supp.) 935 | 4 |
| People v. Plywood Manufacturers of California, etc., 137 Cal. App. 2d (Supp.) 859, dismiss. 76 S. Ct. 787, 351 U. S. 929, 100 L. Ed. 1458, rehear. den. 76 S. Ct. 1046, 351 U. S. 990, 100 L. Ed. 1503 | 4 |
| People v. Sullivan, 60 Cal. App. 2d 539 | 5 |
| Salsbury v. Maryland, 346 U. S. 545, 74 S. Ct. 280, 98 L. Ed. 281 | 5 |
| Stembridge v. State of Georgia, 343 U. S. 541, 72 S. Ct. 834, 96 L. Ed. 1130 | 7, 8 |
| West Coast Hotel v. Parrish, 300 U. S. 379, 57 S. Ct. 578, 81 L. Ed. 703 | 6 |
| Williamson v. Lee Optical of Oklahoma, Inc., 348 U. S. 483, 75 S. Ct. 461, 99 L. Ed. 563 | 5 |

## RULES

PAGE

Revised Rules of the United States Supreme Court, Rule 16..... 1

## STATUTES

California Constitution, Art. IV, Sec. 25..... 8

California Health and Safety Code, Sec. 24242..... 2

California Health and Safety Code, Sec. 24346.2..... 6

California Penal Code, Sec. 1004..... 7

California Penal Code, Sec. 1185..... 7

United States Constitution, Fourteenth Amendment.....4, 5

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THE PEOPLE OF THE STATE OF CALIFORNIA,

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**On Appeal From the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles.**

## MOTION TO AFFIRM THE ORDER AND/OR DISMISS THIS APPEAL.

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the order of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, rendered and entered on November 19, 1957, be affirmed, and/or that the appeal taken therefrom to this Court be dismissed on the ground that the federal question is so unsubstantial as not to warrant further argument, and upon the further ground that the said judgment appealed from rests upon an adequate non-federal basis.

## Statement.

This is a direct appeal from a final order entered on November 19, 1957, by the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles.

Appellant was charged in a verified complaint, filed in the Municipal Court of Los Angeles Judicial District, with having committed a violation of Section 24242 of the Health and Safety Code of the State of California. The complaint alleged that appellant

> "did wilfully and unlawfully, at 501 South Los Angeles Street, in the City of Los Angeles, discharge into the atmosphere from a single source of emission . . . an air contaminant for a period aggregating more than three minutes in any one hour, which contaminant was then and there: (a) as dark and darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines; and (b) of such opacity as to obscure the observer's view to a degree equal to and greater than does smoke described in (a) above."

The cause was submitted to the trial court on the officer's report together with the Ringelmann Chart. Appellant was found guilty and an appeal was duly taken to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles. Briefs were filed in said appellate court and oral argument presented. The matter was submitted and thereafter the order granting probation was affirmed without opinion. A petition for rehearing was filed and denied. A notice of appeal to this court was thereafter presented.

## ARGUMENT.

### I.

### The Decision of the Appellate Department of the Superior Court Is Plainly Correct.

The leading case in the United States on the constitutional limitations on smoke abatement laws is *Northwestern Laundry v. Des Moines*, 239 U. S. 486, 36 S. Ct. 206, 60 L. ed. 396. This court, in affirming the decision of the District Court, stated as follows:

> "So far as the Federal Constitution is concerned, we have no doubt the state may by itself, or through authorized municipalities, declare the emission of dense smoke in cities or populous neighborhoods a nuisance and subject to restraint as such; and that the harshness of such legislation, or its effect upon business interests, short of a merely arbitrary enactment, are not valid constitutional objections. Nor is there any valid Federal constitutional objection in the fact that the regulation may require the discontinuance of the use of property, or subject the occupant to large expense in complying with the terms of the law or ordinance. Recent cases in this court are *Reinman v. Little Rock*, 237 U. S. 171, 59 L. ed. 900, 35 Sup. Ct. Rep. 511; *Chicago & A. R. Co. v. Tranberger*, 238 U. S. 67, 59 L. ed. 1204, 35 Sup. Ct. Rep. 678; *Hadacheck v. Sebastian*, decided December 20th, 1915 [239 U. S. 394, *ante*, 348, 36 Sup. Ct. Rep. 143].
>
> "That such emission of smoke is within the regulatory power of the state has been often affirmed by state courts. (cases cited.)"

In *Moses v. United States*, 16 App. D. C. 428, 50 L. R. A. 532, involving an Act of Congress for the District of Columbia on the subject of smoke, it was stated

that the only inhibition on the states is that the classification of the persons and things shall not be arbitrary. If there be some reasonable basis for the classification made, it is not obnoxious to the charge of denial of equality.

The Appellate Department of the Superior Court in the case of *People v. International Steel Corp.*, 102 Cal. App. 2d Supp. 935, upheld this statute against constitutional attack, stating:

> ". . . We have concluded that the control of 'smog' is a proper subject of the police power, that the prohibitions of the statute herein mentioned violate none of the constitutional provisions referred to. . . .
>
> "The general purpose of the law above mentioned, as appears from sections 24198 and 24199 of the Health and Safety Code, is to reduce air contamination where it exists, 'in order to safeguard life, health, property and the public welfare and to make possible the comfortable enjoyment of life and property.'"

The appellate court again upheld this statute against constitutional attack in the case of *People v. Plywood Manufacturers of California, etc.*, 137 Cal. App. 2d Supp. 859, appeal dismissed 76 S. Ct. 787, 351 U. S. 929, 100 L. ed. 1458, rehearing denied 76 S. Ct. 1046, 351 U. S. 990, 100 L. ed. 1503.

The sole ground of appeal is:

Whether a state of the United States may, consistent with the Fourteenth Amendment to the Constitution of the United States, prohibit the commission of a certain act within two designated areas within the State, but provide that only persons committing the act within one of such areas shall be subject to fine and imprisonment; or,

does such action by the State deny to those persons so subject to fine and imprisonment the equal protection of the laws.

A statute adopted under the police power is general and constitutional when it applies uniform rules of conduct for all those coming within the scope of its application and may not be challenged because of any denial of "equal protection of the law" to those on whom it operates because others differently situated and within a different legal classification may not be affected by its terms.

*People v. Sullivan* (1943), 60 Cal. App. 2d 539.

The constitutional guarantee of equal protection of the laws does not require territorial uniformity.

*Ocampo v. United States*, 234 U. S. 91, 34 S. Ct. 712, 58 L. ed. 1231

The equal protection clause of the Fourteenth Amendment relates to equality between persons in a state, not between areas in a state.

*Salsbury v. Maryland*, 346 U. S. 545, 74 S. Ct. 280, 98 L. ed. 281.

There is no violation of equal protection where legislative discrimination reflects the fact, or legislative belief, that evils in the same field are of different dimensions and proportions, requiring different remedies, or when the discrimination occurs as a consequence of reformative legislation which takes one step at a time and addresses itself to the phase of the problem which seems most acute to the legislative mind.

*Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U. S. 483, 75 S. Ct. 461, 99 L. ed. 563.

The legislature is free to recognize degrees of harm; a law which hits the evil where it is most felt will not be overthrown because there are other instances to which it might have been applied.

*West Coast Hotel v. Parrish*, 300 U. S. 379, 57 S. Ct. 578, 81 L. ed. 703.

While the Constitution, in enjoining the legal protection of the laws upon states, precludes irrational discrimination as between persons or groups of persons in the incidence of a law, it does not require situations which are different in fact or opinion to be treated in law as though they were the same.

*Goesaert v. Cleary*, 335 U. S. 464, 69 S. Ct. 198, 93 L. ed. 163.

The deference due to the judgment of a state legislature on the matter of statutory classification alleged to deny equal protection of the laws, is especially to be observed when local conditions which the court cannot know may affect the answer to the crucial question of whether the court can say, on its judicial knowledge, that the legislature could not have had any reasonable ground for believing there were such public considerations as to justify the distinction made.

*Dominion Hotel v. State of Arizona*, 249 U. S. 265, 39 S. Ct. 273, 63 L. ed. 597.

It is clearly apparent that the California legislature did find that the problems of air pollution in the San Francisco Bay area were of a special nature by reason of the geographical location and weather conditions (Sec. 24346.2, California Health and Safety Code, Appellant's Jurisdictional Statement, Appendix p. 26). Thus the legislature could also find that criminal punishment was unnecessary.

## II.

## The Supreme Court of the United States Should Not Take Jurisdiction to Review an Order Where No Opinion Was Delivered by the Highest State Court.

The record and Appellant's Jurisdictional Statement show that no opinion was delivered by the Appellate Department of the Superior Court of Los Angeles County. [R. 13; Jurisdictional Statement, pp. 16, 17.]

In *Stembridge v. State of Georgia*, 343 U. S. 541, 72 S. Ct. 834, 96 L. ed. 1130, it was held that where the highest court of the state delivers no opinion and that it appears the judgment might have rested upon a non-federal ground, this court will not take jurisdiction to review the judgment.

Appellant's case in the trial court was submitted on the officer's report together with the Ringelmann Chart [R. 3; Jurisdictional Statement, p. 4]. Appellant's Jurisdictional Statement (pp. 4, 5) does not indicate the raising of a federal question in such court of first instance.

The minutes of the trial court indicate appellant did not avail himself of the opportunity to raise a federal question at the trial level by demurrer to the complaint under Section 1004 of the California Penal Code (App. p. 1). Such minutes do not indicate the raising of a federal question during the course of the trial nor in an available motion in arrest of judgment under Section 1185 of the California Penal Code (App. p. 1).

It is a general rule of California appellate review, early established and long adhered-to, that questions not raised in the trial court will not be considered on appeal.

*People v. Alvidrez*, 158 A. C. A. 317, 319;

*MacKenzie v. Angle*, 82 Cal. App. 2d 254, 263.

On the trial court record under such rule the appellate court could have affirmed the order of the trial court on an adequate state ground. Furthermore, the statute under which appellant was charged and convicted is clearly a general law having uniform application. The various sections of the California Health and Safety Code relating to the Bay Area Air Pollution Control District, to which appellant has referred, are conceivably "special laws" and could be held to be in violation of Article IV, Section 25 of the California Constitution (App. p. 2). Such reasoning by the appellate court would clearly lead to a judgment on non-federal grounds.

In that the Appellate Department of the Superior Court delivered no opinion and its decision might have rested on either of two adequate state grounds, under *Stembridge v. Georgia*, *supra*, this court should decline jurisdiction.

Appellee urges, therefore, that the appellant presents no substantial question for the decision of this court; that the order sought to be appealed from should be affirmed and/or the appeal dismissed.

Respectfully submitted,

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## APPENDIX.

Stats. 1951, c. 1674, p. 3841 (Penal Code, Section 1004)

The defendant may demur to the accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof either:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, or, if an information or complaint that the court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the provisions of Sections 950 and 952, and also Section 951 in case of an indictment or information;

3. That more than one offense is charged, except as provided in Section 954;

4. That the facts stated do not constitute a public offense;

5. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

Stats. 1951, c. 1674, p. 3851 (Penal Code, Section 1185)

A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea, finding, or verdict of guilty, or on a finding or verdict against the defendant, on a plea of a former conviction, former acquittal or once in jeopardy. It may be founded on any of the defects in the accusatory pleading mentioned in Section 1004, unless the objection has been waived by a failure to demur, and must be made and determined before the judgment is pronounced. When determined, the order must be immediately entered in the minutes.

Stats. 1955, Vol. I, p. XXIII (California Constitution, Article IV, Section 25)

Local or special laws.

Sec. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of justices of the peace, police judges, and of constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of courts of justice.

Fourth—Providing for changing the venue in civil or criminal actions.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates of deceased persons, minors or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State Treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or incumber his or her property.

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—For limitation of civil or criminal actions.

Thirty-third—In all other cases where a general law can be made applicable.